

CLAY COUNTY BOARD OF COMMISSIONERS

Tuesday, April 7, 2009

8:30 a.m.

County Board Room – 3<sup>rd</sup> Floor – Courthouse

M I N U T E S

The Clay County Board of Commissioners met in regular session on Tuesday, April 7, 2009, with all commissioners present: Campbell, Evert, Ingersoll, Waller and Weyland.

APPROVAL OF AGENDA

On motion by Evert, seconded by Weyland, and unanimously carried, the agenda was approved as presented.

APPROVE RENEWAL OF DEPARTMENT OF PUBLIC SAFETY/BUREAU OF CRIMINAL  
APPREHENSION LEASE IN LAW ENFORCEMENT CENTER

By consent agenda, the Board approved execution of a lease with the Department of Public Safety/Bureau of Criminal Apprehension for 765 sq.ft. of office, lab and conference space in the lower level of the Law Enforcement Center.

RECOMMENDATION TO CARRY OVER UNEXPENDED 2008 FUNDING FOR CITY  
RECYCLING AND COMPOSTING ACTIVITIES INTO THE FISCAL YEAR 2009  
SOLID WASTE REVENUE FUND

By consent agenda, the Board approved a recommendation to carry over unexpended 2008 funding for city recycling and composting activities into the fiscal year 2009 Solid Waste Revenue Fund.

APPROVAL OF LIQUOR LICENSE, KRAGNES INN

By consent agenda, the Board approved renewal of the liquor license for the Kragnes Inn, 9816 21 Street North, Moorhead, MN.

APPROVAL OF PRESCRIBED BURN IN ELKTON TOWNSHIP BY  
THE NATURE CONSERVANCY

By consent agenda, the Board approved a prescribed burn on a 10 acre parcel of County owned property in the SE¼ SW¼ Section 10, Elkton Township, to be conducted by The Nature Conservancy (TNC). The 10 acre parcel is surrounded by TNC property and the open burn was to have been conducted in 2008, but that burn did not occur.

RATIFY ACTION TAKEN AT EMERGENCY SPECIAL SESSION. 4/1/09.  
UNDER STATE OF EMERGENCY – RESOLUTION REQUESTING A  
PRESIDENTIAL DECLARATION OF A MAJOR DISASTER

By consent agenda, the Board ratified their action taken on 4/1/09 under State of Emergency, when they adopted a resolution requesting a Presidential Declaration of a Major Disaster, as follows:

**RESOLUTION 2009-10**  
**Resolution Requesting a Presidential Declaration of a Major Disaster**

**WHEREAS** the County of Clay has sustained severe losses of major proportion, caused by flooding events beginning March 15, 2009 and continuing; and

**WHEREAS** Clay County is a public entity within the State of Minnesota;

**WHEREAS** substantial damage has been sustained to both public and private property, as outlined in the attached damage assessment forms; and

**WHEREAS** the cost of recovery from this disaster is beyond the resources available within the county, and state and federal resources are necessary;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of County Commissioners, for and on behalf of the citizens of Clay County, request the Governor of the State of Minnesota to petition the President of the United States to declare the County of Clay, Minnesota, to be a major disaster area, through appropriate channels.

**BE IT FURTHER RESOLVED** that this request is for:

1. The Public Assistance (Infrastructure Support) and Human Service Programs as offered through P.L. 93-288 and 106.390.

2. The Hazard Mitigation Program, as offered through P.L. 93-288 and 106.390.

**BE IT FURTHER RESOLVED** that the County Emergency Management Director is authorized to coordinate the damage survey teams with local government, and assist in the administration of the disaster recovery process, as needed.

**RATIFY AGREEMENT WITH MINNESOTA STATE UNIVERSITY MOORHEAD FOR USE OF  
McLEAN HALL DURING FLOOD EMERGENCY**

By consent agenda, the Board ratified the execution of a contract with Minnesota State University Moorhead, which was entered into during the flood emergency, for use of McLean Hall as a temporary Evacuation Call Center for the volunteers who are assisting in the flood control effort in the area.

**APPOINTMENT OF MS. LORI HOVDESTAD TO  
HOUSING & REDEVELOPMENT AUTHORITY BOARD OF COMMISSIONERS**

By consent agenda, the Board approved the appointment of Ms. Lori Hovdestad to the Housing & Redevelopment Authority Board of Commissioners effective April 7, 2009.

**AUTHORIZATION TO ADVERTISE FOR BIDS FOR HIGHWAY DEPARTMENT YEARLY  
SUPPLIES, MAY 5, 2009, 10:00 A.M.**

By consent agenda, the Board authorized advertisement for bids for various Highway Department yearly supplies, to be opened May 5, 2009, 10:00 a.m.

**CITIZENS TO BE HEARD**

There were no citizens present who wished to address the Board.

**EMPLOYEE RECOGNITION**

The Board recognized the following employees for their years of service to Clay County: Ms. Janet Halvorson, Financial Worker, Social Services, 30 years; Ms. Michelle Hughes, Case Aide, Social Services, 25 years; Ms. Kathryn Anderson, Nursing Director, Public Health, 20 years; Ms. Linda Cruz, Child Support Officer, Social Services, 15 years; Ms.

Julie Kennedy, Hazardous Waste Coordinator, 15 years; Lt. Matt Siiro, Chief Deputy Sheriff, 15 years.

**REQUEST FOR 12-MONTH MORATORIUM ON APPROVAL AND CONSTRUCTION OF ALL  
WIND ENERGY CONVERSION SYSTEMS IN CLAY COUNTY PENDING DEVELOPMENT AND  
NEW WIND TURBINE ORDINANCE**

Mr. Dwight Mickelson and Mr. Per Anderson, representing the Clay County Wind Energy Information Group, were present to request a 12-month moratorium on approval and construction of all wind energy conversion systems in Clay County pending the development of a new wind turbine ordinance.

Mr. Mickelson presented a map depicting the number of proposed towers across Clay County in the near future (500+), for which some of the companies are still in the process of signing up landowners. The towers range from 1.5-3 megawatts and are up to 490' tall.

Mr. Mickelson presented numerous questions for the Board (See Attachment "A"), including: What is the County's role in this process? Does the land use plan address future wind energy systems? What is the aggregate effect of the projects in the County? When does a rural area become an industrial park due to wind farm development? What are cumulative effects of access roads on drainage systems? What is the reciprocal effect on rural home construction? What are the financial benefits/costs to Clay County?

Mr. Mickelson stated his belief that a 12-month moratorium for siting of wind towers would allow time to address health concerns, gather input for siting from other agencies, research the impact on rural life, and the aggregate effect, etc.

Commissioner Evert agreed that these are all good questions which need answers. Commissioner Evert noted that Mr. Anderson had been a supporter of wind power when the towers in the City of Moorhead were built, and inquired as to what has changed his opinion of them. Mr. Anderson stated that he is still supportive of wind energy but feels there are better ways to do them sustainably. He clarified that the towers in the City of Moorhead are .75 megawatt and are located  $\frac{3}{4}$  miles from residences.

Commissioner Evert commented that there would likely be nowhere in the County to construct a tower if the distance from residences is required to be 1.5 kilometers. Mr. Anderson replied that those are precautionary measures due to the possibility of wind turbine disorders (motion disorders).

Commissioner Ingersoll inquired how many wind farms there are in the United States and if any health problems have been encountered with those presently in operation.

Mr. Anderson stated that there is some controversy concerning wind turbine syndrome with wind farms in Maine.

Commissioner Weyland inquired what impact a moratorium would have on those projects which are already on record.

Chief Assistant County Attorney Michelle Winkis reminded the Board that the State regulates wind turbines unless they are under 5 kilowatts, taking county regulations into consideration. She indicated she would be interested in hearing from the Association of Minnesota Counties as to any issues they may have with wind turbine farms. She felt Clay County does not have the expertise to gather the information described by Mr. Mickelson, and the questions would be better asked at the State level.

Mr. Anderson presented a response to a letter he had written to the Minnesota Department of Health (MDH) concerning adverse health effects as a result of the Lakeswind Wind Power Plant (See Attachment "B"). In the response, MDH indicates they intend to complete a review of the matter within the next three months, qualifying that they have no capacity to conduct independent research on wind turbines. They would only be able to recommend further studies be undertaken, and have no direct regulatory authority for construction of wind turbine generators.

Commissioner Campbell commented that the Federal government is actively promoting alternative energy.

Commissioner Ingersoll commented that this is more a State issue than a County issue, and cautioned that the County may take on responsibility for resources it does not have. He did not feel a moratorium would stop development in this area.

Mr. Anderson stated that the County is already looking at revising its ordinance for wind farms, and that change has to start somewhere.

Commissioner Campbell felt the list of questions should be submitted to the Planning Commission to determine which are appropriate for Clay County's response.

Commissioner Evert informed the Board that he has heard from numerous individuals who are in support of the wind farm projects. He added that he has many constituents who will benefit from the projects and they do not want them derailed. He noted that every system will impact someone negatively.

Commissioner Waller indicated that he supports wind power and would not support a moratorium. Commissioner Waller noted that he would like to see AMC's position on this matter, as well as the Planning Commission's suggestions. He stated that information has been gathered from counties which have had wind farms for significant periods of time and no negative health issues have been shared.

On motion by Campbell, seconded by Weyland, and unanimously carried, the Board requested that the Planning Commission review the list of questions submitted today and respond to the issues within their scope (access roads, setbacks, etc.)

Mr. Anderson felt the Board is asking a lot from the Planning Commission. Commissioner Campbell reminded him that the Planning Commission is comprised of members from all walks of life and if they want an expert opinion, they will request it.

Commissioner Evert reminded the Board that an information session is being scheduled to hear from a neutral party with expertise in wind farms. He felt any action on today's request should wait until after that presentation.

Mr. Paul Ornberg, a resident in the Rollag area, expressed his concern with the possibility of the construction of wind farms. He felt no one has taken the time to specifically research impacts on health from wind farms. He stated his belief that Clay County has the responsibility to represent him to the Public Utilities Commission, in that a letter from the Clay County Board of Commissioners would have more impact than one from himself. He felt there are other sources of alternative energy, such as geothermal, which should be used instead of wind energy. He felt the Board should not sign a letter of community support when they haven't checked with the people who live in the impacted area.

County Administrator Vijay Sethi informed the Board that he would contact AMC for the requested information. He added that Planning & Environmental Programs Director

Tim Magnusson is firming up details for a presentation by a neutral party, to which the Planning Commission will be invited.

Commissioner Evert commented that AMC's General Policy Committee supports alternative energy. He noted that there are numerous counties in Southern Minnesota with wind farms and concluded that they may not have been faced with the questions that have been raised today.

Commissioner Campbell suggested that the AMC Public Health Policy Committee review this matter as well.

#### JUVENILE CENTER 2008 YEARLY REPORT AND BUDGET DISCUSSION

Juvenile Center Director Barry Steen presented the 2008 yearly report for the West Central Regional Juvenile Center, noting that there were 378 residents in the secure programs, an average of 16.87 per day (19 was the projection). There were 404 residents in the non-secure programs (almost identical to the 2007 population).

Mr. Steen reminded the Board that there was an approximate \$150,000 deficit for 2008, which is proposed to be cost shared with the other member counties (11 out of 13 have agreed to the cost share). Mr. Steen informed the Board that procedures have been put in place to more closely track the budget in 2009, including additional reports to the member counties.

Mr. Steen informed the Board that he would seek reimbursement for per diems lost during the recent flood event when youth could not be housed here.

Mr. Steen informed the Board that he is conducting a survey of the member counties to gauge those things that the Center is doing right and wrong, and why counties use the facility and why they do not.

#### PROCEDURES FOR DISPOSAL OF SAND FROM SANDBAGS IN RURAL CLAY COUNTY

Planning & Environmental Programs Coordinator Kathy Maher informed the Board that the Corps of Engineers will contract with private companies for sand/sand bag clean-up from residences in Clay County. The materials must be placed by homeowners on the public right-of-ways and it will be picked up and hauled to approved collection sites. Some of the collected sand may be used at the Landfill and some at the Highway Department. The City of Moorhead is interested in salvaging sand collected within the city for their own purposes.

Commissioner Campbell requested that several collection sites be established in Oakport Township at locations where the material collected would be helpful for the future permanent flood protection efforts. He also noted that some clay needs to be returned to a site in the Township where the developer had deposited clay for a future development and it was borrowed for dike construction.

County Administrator Vijay Sethi inquired if material that was touched by flood water needs to be separated from that which was not, and was informed that there are Minnesota Pollution Control Agency regulations to follow regarding such materials.

On motion by Evert, seconded by Weyland, and unanimously carried, the Board agreed to request that four sites in Oakport Township and the Highway Department be approved for sand collection following the second crest of the Red River.

### FLOOD UPDATE – SHERIFF'S DEPARTMENT

Sheriff Bill Bergquist informed the Board that his department is in the planning mode for the second crest of the Red River, likely to occur April 16-18. Emergency Management Director Lt. Bryan Green informed the Board that individual assessments are ongoing, and 71 homes have been identified with major damage, 500 with minor/moderate damage or sewer backup, and he expects those numbers to increase. He added that debris management is going well. The Red Cross, Salvation Army, FirstLink and United Way have implemented programs for assistance. Lt. Green stated that the Emergency Operations Center will be up and running in the Courthouse again by the weekend.

Commissioner Campbell reminded the citizens that they must report damage to their residence so all damage is considered in FEMA's determination for Individual Assistance. Commissioner Campbell stated that he has heard from residents on the North side of Moorhead that they do not feel they had adequate support with the first flood. He related that Oakport Township would like assistance with night time monitoring of their four community levees. Sheriff Bergquist commented that the National Guard could be called in for this purpose.

On motion by Campbell, seconded by Evert, and unanimously carried, the Board directed that a letter be sent to Governor Tim Pawlenty, the County's Congressional delegation, and local representatives requesting their assistance in securing 90% reimbursement from FEMA for damages, and that the balance be covered by the State.

On motion by Evert, seconded by Campbell, and unanimously carried, the Board directed that a letter be sent to Governor Tim Pawlenty, the County's Congressional delegation, and local representatives concerning the need for a disaster declaration for Individual Assistance.

The Board expressed their appreciation to the staff and departments for their efforts in the flood fight.

Regional Extension Educator Nancy Frosaker Johnson offered Extension's services and materials for the flood recovery. Informational materials in several languages will be placed in stores, with the Red Cross, at churches, etc. She added that moisture meters will be obtained for residents' use in determining levels of mold/mildew.

County Auditor Lori Johnson informed the Board that her staff is working with the department heads to make sure all flood costs are coded properly for future reimbursement by FEMA.

County Engineer David Overbo stated that the County has been divided into five areas, using five contractors and engineering technicians to work on the various repair projects.

Planning & Environmental Programs Director Tim Magnusson stated that six homes in Crestwood Subdivision suffered substantial damage. His office is accepting information from citizens as to the level of damage the incurred. He noted that permits are required for reconstruction.

Environmental Health Director Bruce Jaster informed the Board that 40 water samples have been tested so far, and about 20% are coming back as contaminated. The impacted citizens are informed of the process to resolve the contamination.

Human Resources Director Kari Alme informed the Board that employees were allowed, at their department head's discretion, to volunteer during their regular work

hours with flood fighting efforts. Necessary overtime hours incurred will be submitted to FEMA for reimbursement.

Ms. Alme informed the Board that the Personnel Issues Committee has discussed the current Personnel Policy (Section 17) which allows the County Board to approve overtime (at straight time) for exempt employees after 48 hours worked in situations involving a Presidential Disaster Declaration. The Personnel Issues Committee has recommended the Policy be changed to allow for the payment of overtime (at straight time) for exempt employees after 40 hours in situations involving a Presidential Disaster Declaration with County Board approval.

Considerable discussion took place regarding the rationale for paying exempt employees at straight time rather than time and a half, consistency with past practice, Fair Labor Standards Act guidelines, etc.

On motion by Campbell, seconded by Evert, and unanimously carried, the Board amended the Personnel Policy, Section 17, to allow for payment of straight time to exempt employees after 40 hours worked in situations of Presidential Disaster Declaration retroactive to 1/1/09; and approved payment of straight time for exempt employees per the current policy for the 2009 spring flood event.

#### APPROVE FINAL DOCUMENTS FOR CSAH 26 BITUMINOUS PAVING

On motion by Evert, seconded by Weyland, and unanimously carried, the Board approved final documents for the CSAH 26 Bituminous Paving project in the amount of \$2,372,934.99. The original contract amount was \$1,912,371.79 and overran because of poor soil conditions and moisture, requiring additional sand, gravel and fabric.

#### APPROVE BIDS FOR COUNTYWIDE SEAL COATING PROJECTS

On motion by Evert, seconded by Campbell, and unanimously carried, the Board awarded the bids opened March 24, 2009 for Countywide seal coating projects to the low bidder, Astech, Inc., for their bid of \$675,517.50. County Engineer David Overbo will submit a justification letter to MnDOT explaining that the cost of seal coat oil was much higher than was estimated during the design phase.

#### 2009-2012 DEFICIENT BRIDGE PRIORITIZATION RESOLUTIONS

Discussion on this topic was postponed until April 14, 2009.

#### AUTHORIZATION TO ADVERTISE FOR BIDS FOR YEARLY SUPPLIES

On motion by Evert, seconded by Campbell, and unanimously carried, the Board rescinded the action taken under Consent Agenda for this item earlier in the day, and approved advertisement for bids for yearly supplies to be opened May 19, 2009, 10:00 a.m. (rather than May 5, 2009).

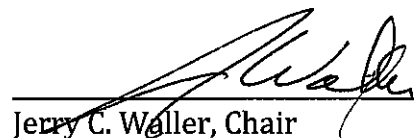
#### APPROVE PAYMENT OF BILLS AND VOUCHERS

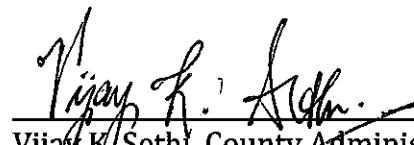
On motion by Evert, seconded by Campbell, and unanimously carried, the bills and vouchers were approved for payment.

#### ADJOURN

The meeting adjourned at 11:30 a.m.

corrected  
5-5-09  
to  
Morris  
Sealcoat  
bid of  
\$675,892.35

  
\_\_\_\_\_  
Jerry C. Waller, Chair  
Clay County Board of Commissioners

  
\_\_\_\_\_  
Vijay K. Sethi, County Administrator



**Questions about Wind Energy in Clay County.**

What is Clay County's role in wind energy development?

Does the county's Comprehensive Land Use Plan thoroughly address future wind energy systems?

What is the aggregate effect of multiple wind energy projects in Clay County?

At what tower density and scale does a rural agricultural area become an industrial electrical system?

Does that system coincide with the county's Comprehensive Land Use Plan for rural agricultural areas?

What are the cumulative effects of hundreds of access roads on water movement? On drainage systems?

Will there be eminent domain issues?

What are safe setbacks from existing homes? Are there any adverse health effects?

Will LifeFlight land within wind farm areas?

What is the reciprocal effect on rural housing development?

What have been the social effects in other areas of the country where wind farms have recently been developed? What have been their net financial gains or losses?

What could be the financial benefits or costs to the Clay County?

Based on these and many more questions:

**I am requesting the Clay County Commissioners adopt a 12-month interim ordinance for siting of all Wind Energy Conversion Systems and that the commission approves the appointment of an advisory group to assist in county wind ordinance development.**

Why is this important?

1. New health concerns research is emerging and those findings must be considered when determining wind turbine setbacks from dwellings.

2. There should be a thorough and comprehensive county plan for siting that carefully considers input from other effected agencies such as the DNR, the watershed districts, the federal wetland reserve program, Life Flight and local fire departments.

3. The impact on the "rural character" of Clay County needs to be carefully considered in light of the industrial scale of proposed commercial wind farms.

4. Affected citizens with and without land leases from wind companies need to know that they have opportunity to provide input about wind energy in their neighborhoods.

5. Though the permitting of larger wind farms currently occurs at the state level, Minnesota statutes allow counties to offer guidance to the Public Utilities Commission in the form of county ordinances. Clay County should take control of wind energy development, making sure that there is a good balance of economic development, protection of rural quality of life, safety, and community input.

Dwight Mickelson  
402 9<sup>th</sup> ST. S  
Moorhead, MN 56560  
4/7/09



*Protecting, maintaining and improving the health of all Minnesotans*

April 1, 2009

Per and Sandra Anderson  
2727-29<sup>th</sup> Avenue South  
Moorhead, MN 56560

Dear Mr. and Ms. Anderson:

We are writing in reply to your letters dated February 17, 2009 and March 12, 2009 regarding possible adverse health effects that could occur as a result of development of the "Lakeswind Wind Power Plant" in Clay County. Specifically, you refer to reports of health complaints that might be related to long term exposure to low-frequency sound energy generated by wind turbines. You also point out that consideration of possible health impacts is timely because development of additional wind projects is likely.

We agree with you that this is an area which merits examination of experiences and policies of other states and countries, and review of relevant scientific and medical literature, including *Wind Turbine Syndrome* by Nina Pierpont, M.D. Thank you for the partial copy. Accordingly, staff at the Minnesota Department of Health (MDH) will conduct a review and request the text of the book by Dr. Pierpont. MDH will research this subject and share our findings with you and other citizens, as well as with regulatory agencies and the scientific community. MDH staff have been in contact with the Minnesota Public Utilities Commission (PUC) and will provide a copy of our findings to the PUC and to Mr. Tim Magnusson (Clay County Planning Director), in accordance with your request.

Please be aware that MDH has no capacity to conduct independent research on wind turbines to further investigate uncertainties and limitations of available studies. In the event that our findings are inconclusive, we will only be able to recommend that additional studies be undertaken. We also have no direct regulatory authority for construction of wind turbine generators. Siting and building a project that could affect the health of a community is a complex decision and the applicable regulatory agencies must consider both costs and benefits, (including health, environmental and economic effects) that might be engendered by permitting power sources using other forms of energy, or by failure to site any power plant at all.

You have described an important problem, and MDH intends to complete the review described above within the next three months. If you have questions or need further information, please contact Rita Messing, Ph.D., Toxicologist and Supervisor, Site Assessment and Consultation. She can be reached at (651)201-4916 or by e-mail at [rita.messing@state.mn.us](mailto:rita.messing@state.mn.us).

Sincerely,

A handwritten signature in cursive script, reading "Sanne Magnan", followed by a horizontal line.

Sanne Magnan, M.D., Ph.D  
Commissioner  
P.O. Box 64975  
St. Paul, Minnesota 55164-0975

Per and Sandra Anderson

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cc: John Linc Stine, Assistant Commissioner, MDH  
Deborah Pile, Minnesota Department of Commerce  
David Birkholz, Minnesota Department of Commerce  
Larry Hartman, Minnesota Department of Commerce  
Hon. Keith Langseth, Minnesota Senate  
Hon. Morrie Lanning, Minnesota House of Representatives  
Hon. Paul Marquart, Minnesota house of Representatives  
Hon. Kevin Campbell, Clay County Board of Commissioners  
Hon. Jon Evert, Clay County Board of Commissioners  
Hon. Wayne Ingersoll, Clay County Board of Commissioners  
Hon. Grant Weyland, Clay County Board of Commissioners  
Hon. Jerry Waller, Clay County Board of Commissioners